



PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 4000, 4003, 4006, 4010, 4022, 4041A, 4043, 4211, and 4262

RIN 1212–AB56

Technical Amendments: Special Financial Assistance Withdrawal Liability Condition; SECURE 2.0 Act; and Other Updates

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: The Pension Benefit Guaranty Corporation (PBGC) is making miscellaneous technical updates, clarifications, and corrections to PBGC’s regulations, including to clarify a special financial assistance withdrawal liability condition and to update the reference to the dollar limit for lump-sum distributions in the closeout of sufficient multiemployer plans to reflect changes implemented under the SECURE 2.0 Act of 2022.

DATES: This rule is effective on [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

FOR FURTHER INFORMATION CONTACT: Hilary Duke (duke.hilary@pbgc.gov; 202–229–3839), Assistant General Counsel for Regulatory Affairs, or Melissa Rifkin (rifkin.melissa@pbgc.gov; 202–229–6563), Attorney, Regulatory Affairs Division; Office of the General Counsel, Pension Benefit Guaranty Corporation, 445 12th Street SW, Washington, DC 20024–2101. If you are deaf or hard of hearing or have a speech disability, please dial 7–1–1 to access telecommunications relay services.

SUPPLEMENTARY INFORMATION:

Executive Summary

Purpose and Authority

This final rule makes technical corrections, updates, and clarifications to several Pension Benefit Guaranty Corporation (PBGC) regulations.

PBGC's legal authority for this rulemaking comes from section 4002(b)(3) of the Employee Retirement Income Security Act of 1974 (ERISA), which authorizes PBGC to issue regulations to carry out the purposes of title IV of ERISA, and section 4262 of ERISA (Special Financial Assistance by the Corporation), which permits PBGC, in consultation with the Secretary of the Treasury, to impose reasonable conditions by regulation or other guidance on an eligible multiemployer plan that receives special financial assistance (SFA). It also comes from section 4003 of ERISA (Operation of Corporation); section 4006 of ERISA (Premium Rates); section 4010 of ERISA (Authority to Require Certain Information); section 4022 of ERISA (Single-Employer Plan Benefits Guaranteed); section 4041A of ERISA (Termination of Multiemployer Plans); section 4043 of ERISA (Reportable Events); and section 4211 of ERISA (Methods for Computing Withdrawal Liability).

Major Provisions

The major provisions of this regulatory action amend PBGC's regulations on: (1) Special Financial Assistance by PBGC (29 CFR part 4262) to clarify the calculation methodology for the condition requiring a phased recognition of SFA in a plan's determination of withdrawal liability for plans that receive SFA; and (2) Termination of Multiemployer Plans (29 CFR part 4041A) to update the reference to the dollar limit for lump-sum distributions in the closeout of sufficient multiemployer plans (reflecting updated dollar limits for pension plans under section 304 of the SECURE 2.0 Act of 2022 (SECURE 2.0)).¹ In addition, this regulatory action makes other clarifications, corrections, and updates.

¹ SECURE 2.0 Act of 2022, Division T of the Consolidated Appropriations Act, 2023, Pub. L. 117-328 (Dec. 29, 2022).

Background

PBGC administers two insurance programs for private-sector defined benefit pension plans under title IV of ERISA: a single-employer plan termination insurance program and a multiemployer plan insolvency insurance program. In addition, PBGC administers an SFA program for eligible financially distressed multiemployer plans. The primary amendments in this rulemaking apply to the SFA program.

This rulemaking responds to questions from stakeholders requesting clarification of the calculation methodology for the condition imposed on plans that receive SFA requiring a phased recognition of SFA in the determination of withdrawal liability. It also arises from statutory changes and from PBGC's ongoing retrospective regulatory review program to identify and correct inaccuracies, inconsistencies, and requirements made irrelevant over time.

Clarifications to SFA Program Withdrawal Liability Condition

Background

Under section 4262 of ERISA and PBGC's SFA regulation, PBGC provides SFA to certain financially troubled multiemployer plans upon application for assistance. To ensure that SFA is used to pay benefits and the expenses related to those benefit payments, section 4262(m)(1) of ERISA expressly authorizes PBGC, in consultation with the Secretary of the Treasury, to impose reasonable conditions on an eligible multiemployer plan that receives SFA relating to certain aspects of plan terms or operations. These conditions are described in § 4262.16 of PBGC's SFA regulation and include conditions that relate to withdrawal liability.²

On July 8, 2022, PBGC published a final rule³ (July 2022 final rule) adding a condition requiring a phased recognition of SFA in a plan's determination of withdrawal liability. PBGC

² Withdrawal liability represents a withdrawing employer's proportionate share of the plan's unfunded benefit obligations and is an important source of income for the plan. To assess withdrawal liability, the plan sponsor must determine the withdrawing employer's: (1) allocable share of the plan's unfunded vested benefits (UVBs) (the value of nonforfeitable benefits that exceeds the value of plan assets) as of the end of the plan year before the employer's withdrawal, or as otherwise provided under section 4211 of ERISA, and (2) annual withdrawal liability payment and amortization period under section 4219.

³ See 87 FR 40968. PBGC published the July 2022 final rule in response to comments received on an interim final rule, which was published in the Federal Register on July 12, 2021, at 86 FR 36598.

provided for a 30-day comment period solely on this condition. In response to comments received, PBGC published, on January 26, 2023, a final rule⁴ (January 2023 final rule) which provided a process for a plan sponsor to request approval from PBGC for an exception from the withdrawal liability conditions in § 4262.16(g)(1) and (2) under specific circumstances.

Following publication of the January 2023 final rule, PBGC received practitioner questions at public forums related to the withdrawal liability phase-in condition and make-up payments of previously suspended benefits. To address these questions, on July 19, 2023, PBGC posted guidance on its website at *www.pbgc.gov*, in the form of questions and answers, on the withdrawal liability phase-in condition. That guidance clarifies the calculation methodology for the phased recognition of SFA assets for plans that paid make-up payments of previously suspended benefits.

Clarification of Calculation Methodology for Withdrawal Liability Phase-In Condition

The withdrawal liability condition in § 4262.16(g)(2) requires a phased recognition of SFA assets, i.e., SFA and earnings thereon, for the purpose of determining the plan's unfunded vested benefits (UVBs) for calculating withdrawal liability, and provides the calculation methodology for determining the amount of SFA that is phased in for withdrawal liability purposes each year over the projected life of the SFA assets (determined as if SFA assets are exhausted before other plan assets are used to pay benefits and expenses). The applicable phase-in period runs from the first plan year in which the plan receives payment of SFA through the end of the plan year by which, according to the plan's projections, it will exhaust any SFA assets.⁵

To calculate the amount of SFA assets excluded for each plan year during the phase-in period, the plan must take the total amount of SFA paid to the plan (not including the amount

⁴ See 88 FR 4900.

⁵ For a plan that receives payment of SFA under the terms of the interim final rule and then files a supplemented application, the first plan year of payment is the year in which it received SFA under the terms of the interim final rule. Where a plan's first plan year of payment is not the plan year that includes the plan's SFA measurement date, the exhaustion year is deferred by the number of years the first plan year of payment is after the plan year that includes the SFA measurement date.

paid to PBGC for repayment of traditional financial assistance) and multiply that by a fraction, the numerator of which is the number of years remaining in the phase-in period as of the date (the end of the determination year) that the UVBs are being determined, and the denominator is the total number of years in the phase-in period.⁶

Examples are included in § 4262.16(g)(2) to illustrate the calculation methodology for the phased recognition of SFA assets.

Section 4262(k) of ERISA and § 4262.15 require that benefits suspended under sections 305(e)(9) or 4245(a) of ERISA must be reinstated and make-up payments of previously suspended benefits must be paid to certain participants and beneficiaries. Plans must pay these make-up payments either as a lump sum within 3 months of the date SFA is paid, or in equal monthly installments over 5 years, starting within 3 months of the SFA payment date.

As stated in PBGC's guidance posted July 19, 2023, the phased recognition of SFA assets for purposes of calculating employer withdrawal liability was intended to approximate the pattern of how the SFA assets are likely to be spent down by a plan. Therefore, in the calculation under § 4262.16(g)(2)(ix), the amount of the SFA attributable to the make-up payments that have already been paid to participants and beneficiaries should be excluded from the "total amount of SFA paid to the plan under § 4262.12" before multiplication by the phase-in fraction. The result is the amount under § 4262.16(g)(2)(ix) by which the value of plan assets used to determine UVBs for the determination year is reduced under § 4262.16(g)(2)(viii). This calculation methodology applies regardless of whether the make-up payments are made in a lump sum or in equal monthly installments over 5 years, and regardless of whether such payments are made from SFA assets or non-SFA assets, or some combination thereof.

⁶ For a plan that receives payment of SFA under the interim final rule and receives a supplemental payment, the total amount (payment under the interim final rule and supplemental payment) will be included in the phased recognition of SFA assets in determining UVBs for withdrawals occurring in plan years after the plan year the supplemental payment is received by the plan. For withdrawals that occur after the date the supplemented application is filed and before the plan year after the plan year in which the supplemental payment is made, only the payment of SFA under the interim final rule is included in the phased recognition of SFA assets.

Accordingly, this final rule incorporates the guidance posted on July 19, 2023, and amends § 4262.16(g)(2)(ix) to reorganize the existing provisions as paragraph (g)(2)(ix)(A) and to add new paragraph (g)(2)(ix)(B) to clarify how plan assets expended on make-up payments of previously suspended benefits are considered in the calculation methodology. The amendment also clarifies how the repayment of traditional financial assistance is considered in the calculation methodology. In addition, this final rule adds the example from the July 19, 2023, guidance to § 4262.16(g)(2)(xvi)(D).

PBGC also received practitioner questions asking whether the calculation of SFA excluded under § 4262.16(g)(2)(viii) could reduce the value of plan assets for determining UVBs to less than zero. In response, PBGC included in the July 19, 2023, guidance, a provision, applicable to all plans that receive SFA (regardless of whether they are required to pay make-up payments), stating that the value of the plan assets taken into account as of the end of a determination year under § 4262.16(g)(2)(viii) used for purposes of determining UVBs may not be less than zero. This clarification is added in § 4262.16(g)(2)(viii) of the SFA regulation.

Clarifications and Corrections to Multiemployer Plan Regulations

Termination of Multiemployer Plans—29 CFR Part 4041A

PBGC's regulation on Termination of Multiemployer Plans (29 CFR part 4041A) contains rules for the administration of multiemployer plans that have terminated by mass withdrawal. Subpart D contains procedures for closing out a plan where a plan's assets, excluding any claim of the plan for unpaid withdrawal liability, are sufficient to satisfy all obligations for nonforfeitable benefits provided under the plan. In the case of such a plan, the plan sponsor may close out the plan by distributing plan assets in full satisfaction of all nonforfeitable benefits under the plan. Section 4041A.43 provides rules for the payment of nonforfeitable benefits to participants and beneficiaries, including for lump-sum distributions.

Section 203(e)(1) of ERISA and section 411(a)(11)(A) of the Internal Revenue Code provide a threshold (i.e., maximum present value of a benefit) that a pension plan may pay in a

mandatory lump-sum distribution. From 1997 through 2023, that maximum was \$5,000.⁷ After 2023, it will be \$7,000, as changed by section 304 of SECURE 2.0.

Before the amendment provided by this final rule, § 4041A.43(b)(1) provided the dollar figure of \$5,000 as the dollar threshold up to which the plan sponsor of a terminated multiemployer plan that is closing out may make as a lump-sum payment of nonforfeitable benefits. To avoid amending the regulation each time Congress changes the threshold for mandatory lump-sum distributions, the final rule amends § 4041A.43(b)(1) to refer not to a set monetary figure, but to the dollar amount specified in section 203(e)(1) of ERISA. As a result, for purposes of part 4041A, the new \$7,000 maximum automatically will apply to the lump-sum payment of nonforfeitable benefits after December 31, 2023.

Allocating Unfunded Vested Benefits to Withdrawing Employers—29 CFR Part 4211

Under the Allocating Unfunded Vested Benefits to Withdrawing Employers regulation (29 CFR part 4211), PBGC is amending § 4211.31(b) by adding the words “set forth in” that were inadvertently omitted in a prior rule.⁸ The final sentence of paragraph (b) is corrected to read, “the statutory presumptive method set forth in subpart B of this part.”

Other Clarifications, Corrections, and Updates

Filing Rules—29 CFR Part 4000

Under PBGC’s Filing, Issuance, Computation of Time, and Record Retention regulation (29 CFR part 4000), PBGC is modifying § 4000.4 – Where do I file my submission? to update the reference to the telecommunications system for individuals who are deaf or hard of hearing or have a speech disability. PBGC is changing the reference from the “Federal relay service” to the “7-1-1” number, which is the system currently used by PBGC for access to telecommunications relay services.

⁷ The Taxpayer Relief Act of 1997, Pub. L. 105-34 (Aug. 5, 1997), increased the maximum from \$3,500 to \$5,000 effective for plan years beginning after August 5, 1997.

⁸ See 86 FR 1256.

PBGC is removing and reserving § 4000.28 – What if I send a computer disk? which gives instructions for providing filings on a computer disk. Technological advancements have made this section obsolete.

Rules for Administrative Review of Agency Decisions—29 CFR Part 4003

Under PBGC’s Rules for Administrative Review of Agency Decisions regulation (29 CFR part 4003), PBGC is changing § 4003.35 – Decision on request for reconsideration, by removing the word “final” from the phrase “final decision” in paragraph (a). In a prior rule,⁹ the word “final” was removed from other usages of the phrase “final decision” in § 4003.35. In addition, PBGC is changing the wording “request for reconsideration” to “a request for reconsideration” in paragraph (a)(1) to be consistent with the wording in paragraph (a)(2).

Premium Rates—29 CFR Part 4006

PBGC is modifying the Premium Rates regulation (29 CFR part 4006) in § 4006.3 – Premium rate, and § 4006.5 – Exemptions and special rules. Section 4006.3(a) contains references to sections 4006(a)(3)(F) and 4006(a)(3)(H) of ERISA. Both statutory provisions affected the calculation of flat rate premiums and sunset in 2013.¹⁰ As these provisions are no longer relevant for calculating premiums, PBGC is removing them from the premium rates regulation.

Also, PBGC is correcting a citation in § 4006.5(b), which covers the variable-rate premium cap. This paragraph references section “4006(a)(3)(H) of ERISA,” which was added to § 4006.5(b) in 2008 to reference the small employer cap.¹¹ Section 4006(a)(3)(H) was renumbered as 4006(a)(3)(I) in 2013.¹² PBGC is changing this citation in § 4006.5(b) to “section 4006(a)(3)(I) of ERISA for certain small employers.”

⁹ See 85 FR 10279.

¹⁰ Section 4006(a)(3)(F) of ERISA reads, “For each plan year beginning in a calendar year after 2006 and before 2013...” and section 4006(a)(3)(H) of ERISA refers to 4006(a)(3)(A)(iv), which says, “in the case of a multiemployer plan, for plan years beginning after December 31, 2005, and before January 1, 2013.”

¹¹ See 73 FR 15065.

¹² See section 703 of the Bipartisan Budget Act of 2013, Pub. L. 113-67 (Dec. 26, 2013).

Annual Financial and Actuarial Information Reporting—29 CFR Part 4010 and Reportable Events—29 CFR Part 4043

Under PBGC’s regulation on Annual Financial and Actuarial Information Reporting (29 CFR part 4010, “4010 regulation”), PBGC is correcting a reference in § 4010.10(b). The reference to “§ 4010.8(b)(1)” is changed to “§ 4010.8(b)(2)(i)” to account for a prior reorganization of § 4010.8.¹³

PBGC is modifying § 4010.13 under PBGC’s 4010 regulation and § 4043.8 under PBGC’s Reportable Events and Certain Other Notification Requirements regulation (29 CFR part 4043) to replace references to “§ 4901.21(a)(3)” with references to “§ 4901.21(a).” These corrections are to account for changes in a prior reorganization of § 4901.21, under PBGC’s regulation on Disclosure and Public Inspection of Pension Benefit Guaranty Corporation Records (29 CFR part 4901).¹⁴

Benefits Payable in Terminated Single-Employer Plans—29 CFR Part 4022

Under the Benefits Payable in Terminated Single-Employer Plans regulation (29 CFR part 4022), for consistency, PBGC is amending the heading for § 4022.7 by changing the words “single installment” to “lump sum.” In a prior rule,¹⁵ other usages of “single installment” were changed to “lump sum” throughout § 4022.7.

Compliance With Rulemaking Guidelines

Executive Orders 12866 and 13563

The Office of Management and Budget (OMB) has determined that this rule is not a “significant regulatory action” under Executive Order 12866. Accordingly, OMB has not reviewed the final rule under Executive Order 12866.

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that

¹³ See 81 FR 15432.

¹⁴ See 87 FR 43991.

¹⁵ See 88 FR 44045.

maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity).

Although this is not a significant regulatory action under Executive Order 12866, PBGC has examined the economic and policy implications of this final rule and has concluded that there will be no significant economic impact as a result of these amendments to PBGC's regulations. The regulatory amendments concerning SFA primarily codify clarifications already issued by PBGC in sub-regulatory guidance. Making these clarifications more transparent will decrease uncertainty among plan sponsors in applying the withdrawal liability phase-in condition. Without the clarifications, some plan sponsors may not accurately account for make-up payments or repaid traditional financial assistance when calculating the amount of SFA excluded from plan assets for purposes of the condition in the determination of withdrawal liability. The amendments concerning lump-sum distributions reflecting SECURE 2.0 changes, and the miscellaneous amendments, conform PBGC's existing regulations to statutory changes or prior regulatory changes or update and clarify outdated regulatory provisions. These amendments are cost neutral in their impact.

Section 6 of Executive Order 13563 requires agencies to rethink existing regulations by periodically reviewing their regulatory program for rules that “may be outmoded, ineffective, insufficient, or excessively burdensome.” These rules should be modified, streamlined, expanded, or repealed as appropriate. PBGC has identified the amendments in this final rule as consistent with the principles for review under Executive Order 13563. PBGC believes codifying its previously issued guidance provides further clarity to the public, and believes that the other amendments will improve and clarify its existing regulations.

Administrative Procedure Act

The Administrative Procedure Act provides at 5 U.S.C. 553(b) that notice and comment requirements do not apply when an agency, for good cause, finds that they are impracticable, unnecessary, or contrary to the public interest.

With respect to the clarifications to the SFA withdrawal liability condition in § 4262.16(g)(2), as described in PBGC's July 2022 final rule, Congress expressed a clear urgency for PBGC to implement an SFA program to get appropriate assistance to eligible plans as quickly as possible. Congress authorized PBGC to prioritize the filing of applications for eligible plans with the greatest need, during the first 2 years after March 11, 2021, and PBGC provided for such a process. Plans that suspended benefits under section 4245(a) of ERISA have been eligible to apply for SFA since July 12, 2021, and plans that suspended benefits under section 305(e)(9) have been eligible to apply since December 27, 2021. In 2022, plans began to receive payment of SFA and pay required make-up payments. This final rule provides clarifications needed by plan sponsors that pay make-up payments that will enable them to accurately calculate the amount of SFA excluded from plan assets for purposes of the withdrawal liability phase-in condition. Recognizing the importance of announcing these clarifications promptly, the changes to §§ 4262.16(g)(2)(viii), (ix), and (xvi)(D) were stated in sub-regulatory guidance. In addition, the amendment provides clarification for plans that repaid traditional financial assistance to PBGC. Thus, the amendments have the effect of increasing clarity of the calculation methodology for plan sponsors and employers.

With respect to the amendment to § 4041A.43(b)(1) in PBGC's Termination of Multiemployer Plans regulation, the change conforms the regulation to the SECURE 2.0 change to enable certain plans to make lump-sum distributions up to the permissible threshold amount of \$7,000 beginning January 1, 2024 (from \$5,000). PBGC is authorized under section 4041A(f)(1) of ERISA to permit the payment in a lump sum of benefits that exceed \$1,750. In order to approve these higher distributions, PBGC must find that they are not adverse to the interests of the plan's participants and beneficiaries generally and do not unreasonably increase PBGC's risk of loss with respect to the plan. When a plan is being closed out under subpart D of part 4041A, a higher distribution threshold would not be adverse to the interests of the plan's participants and beneficiaries, since their nonforfeitable benefits must be fully satisfied as part of the closeout.

This fact also ensures that the higher threshold will not unreasonably increase PBGC's risk of loss with respect to the plan. In addition, because the SECURE 2.0 change applies to distributions after December 31, 2023, conforming the regulation without delay will simplify plan administration and be in the best interests of participants and beneficiaries who may request lump-sum distributions. The other amendments in this final rule are minor technical amendments to update and correct PBGC's regulations; notice and comment are unnecessary because the amendments effect no substantive changes to any regulation.

Accordingly, PBGC has determined that the amendments in this final rule fall under the "good cause" exemption of the Administrative Procedure Act at 5 U.S.C. 553(b)(3)(B) and that the public interest is best served by issuing this final rule expeditiously, without further opportunity for notice and comment.

Regulatory Flexibility Act

Because PBGC is not publishing a general notice of proposed rulemaking under 5 U.S.C. 553(b), the regulatory flexibility analysis requirements of the Regulatory Flexibility Act do not apply. See 5 U.S.C. 601(2).

List of Subjects

29 CFR Part 4000

Administrative practice and procedure, Employee benefit plans, Pension insurance, Pensions, Reporting and recordkeeping requirements.

29 CFR Part 4003

Administrative practice and procedure, Organization and functions (Government agencies), Pension insurance.

29 CFR Part 4006

Employee benefit plans, Pension insurance.

29 CFR Part 4010

Employee benefit plans, Penalties, Pension insurance, Pensions, Reporting and recordkeeping requirements.

29 CFR Part 4022

Employee benefit plans, Pension insurance, Pensions, Reporting and recordkeeping requirements.

29 CFR Part 4041A

Employee benefit plans, Pension insurance, Reporting and recordkeeping requirements.

29 CFR Part 4043

Employee benefit plans, Pension insurance, Reporting and recordkeeping requirements.

29 CFR Part 4211

Employee benefit plans, Pension insurance, Pensions, Reporting and recordkeeping requirements.

29 CFR Part 4262

Employee benefit plans, Pension insurance, Pensions, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, PBGC is amending 29 CFR parts 4000, 4003, 4006, 4010, 4022, 4041A, 4043, 4211, and 4262 as follows.

PART 4000—FILING, ISSUANCE, COMPUTATION OF TIME, AND RECORD RETENTION

1. The authority citation for part 4000 continues to read as follows:

Authority: 29 U.S.C. 1083(k), 1302(b)(3).

§ 4000.4 [Amended]

2. Amend § 4000.4 by removing the words “TTY/TDD users may call the Federal relay service toll-free at 1-800-877-8339 and ask to be connected to the appropriate number” and adding in their place the words “If you are deaf or hard of hearing or have a speech disability, please dial 7-1-1 to access telecommunications relay services”.

§ 4000.28 [Removed and Reserved]

3. Remove and reserve § 4000.28.

PART 4003—RULES FOR ADMINISTRATIVE REVIEW OF AGENCY DECISIONS

4. The authority citation for part 4003 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3).

§ 4003.35 [Amended]

5. Amend § 4003.35 in paragraph (a) introductory text by removing the word “final” and in paragraph (a)(1) by removing the words “decision on request” and adding in their place the words “decision on a request”.

PART 4006—PREMIUM RATES

6. The authority citation for part 4006 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1306, 1307.

§ 4006.3 [Amended]

7. Amend § 4006.3 by:
 - a. Removing the phrase “ERISA section 4006(a)(3)(A), (F), and (G)” and adding in its place the phrase “section 4006(a)(3)(A) and (G) of ERISA” in paragraph (a)(1).
 - b. Removing the phrase “ERISA section 4006(a)(3)(A), (H), and (J)” and adding in its place the phrase “section 4006(a)(3)(A) and (J) of ERISA” in paragraph (a)(2).

§ 4006.5 [Amended]

8. Amend § 4006.5 in paragraph (b) by removing the phrase “ERISA section 4006(a)(3)(H)” and adding in its place the phrase “section 4006(a)(3)(I) of ERISA for certain small employers”.

PART 4010—ANNUAL FINANCIAL AND ACTUARIAL INFORMATION REPORTING

9. The authority citation for part 4010 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1310.

§ 4010.10 [Amended]

10. Amend § 4010.10 in paragraph (b) by removing “§ 4010.8(b)(1)” and adding in its place “§ 4010.8(b)(2)(i)”.

§ 4010.13 [Amended]

11. Amend § 4010.13 by removing the phrase “§ 4901.21(a)(3)” and adding in its place the phrase “§ 4901.21(a)”.

PART 4022—BENEFITS PAYABLE IN TERMINATED SINGLE-EMPLOYER PLANS

12. The authority citation for part 4022 continues to read as follows:

Authority: 29 U.S.C. 1302, 1322, 1322b, 1341(c)(3)(D), and 1344.

13. Revise the section heading for § 4022.7 to read as follows:

§ 4022.7 Benefits payable in a lump sum.

PART 4041A—TERMINATION OF MULTIPLE EMPLOYER PLANS

14. The authority citation for part 4041A continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1341a, 1431, 1441.

§ 4041A.43 [Amended]

15. Amend § 4041A.43 in paragraph (b)(1) by removing “\$5,000” and adding in its place the words “the dollar amount specified in section 203(e)(1) of ERISA”.

PART 4043 - REPORTABLE EVENTS AND CERTAIN OTHER NOTIFICATION REQUIREMENTS

16. The authority citation for part 4043 continues to read as follows:

Authority: 29 U.S.C. 1083(k), 1302(b)(3), 1343.

§ 4043.8 [Amended]

17. Amend § 4043.8 by removing “§ 4901.21(a)(3)” and adding in its place “§ 4901.21(a)”.

PART 4211— ALLOCATING UNFUNDED VESTED BENEFITS TO WITHDRAWING EMPLOYERS

18. The authority citation for part 4211 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3); 1391(c)(1), (c)(2)(D), (c)(5)(A), (c)(5)(B), (c)(5)(D), and (f).

§ 4211.31 [Amended]

19. Amend § 4211.31 in paragraph (b) by removing the words “subpart B of this part” and adding in its place the words “set forth in subpart B of this part”.

PART 4262— SPECIAL FINANCIAL ASSISTANCE BY PBGC

20. The authority citation for part 4262 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1432.

§ 4262.16 [Amended]

21. Amend § 4262.16 by revising paragraphs (g)(2)(viii) and (ix) and adding paragraph (g)(2)(xvi)(D) to read as follows:

§ 4262.16 Conditions for special financial assistance.

* * * * *

(g) * * *

(2) * * *

(viii) *SFA assets excluded.* The value of the plan assets taken into account as of the end of each determination year is the value of the assets that would otherwise be taken into account in the absence of this provision reduced by the amount described in paragraph (g)(2)(ix) of this section. The value of plan assets determined under this paragraph (g)(2)(viii) may not be less than zero.

(ix) *Calculation of SFA assets excluded—(A) In general.* Except for plans required to pay make-up payments described in § 4262.15(b), the amount described in this paragraph (g)(2)(ix)(A) is, as of the end of the determination year —

(1) The total amount of special financial assistance paid to the plan under § 4262.12 (as determined under § 4262.12(a) or (b), or under § 4262.12(b) and (c) for plans paid under a supplemented application, as applicable), minus the amount paid to PBGC under § 4262.12(e), as of the end of the determination year;

(2) Multiplied by a fraction, the numerator of which is the number of years determined under paragraph (g)(2)(x) of this section as of the end of the determination year and the denominator of which is the number of years determined under paragraph (g)(2)(xi) of this section as of the end of the determination year.

(B) *Plans required to pay make-up payments.* For plans required to pay make-up payments described in § 4262.15(b), the amount described in this paragraph (g)(2)(ix)(B) is, as of the end of the determination year —

(1) The total amount of special financial assistance paid to the plan under § 4262.12 (as determined under § 4262.12(a) or (b), or under § 4262.12(b) and (c) for plans paid under a supplemented application, as applicable), minus the amount paid to PBGC under § 4262.12(e), and minus the amount of make-up payments paid by the plan to participants and beneficiaries under § 4262.15(b) whether the payments are made from SFA assets or non-SFA assets, as of the end of the determination year;

(2) Multiplied by a fraction, the numerator of which is the number of years determined under paragraph (g)(2)(x) of this section as of the end of the determination year and the denominator of which is the number of years determined under paragraph (g)(2)(xi) of this section as of the end of the determination year.

* * * * *

(xvi) * * *

(D) *Example 4.* In plan year 2022, Plan D received an SFA payment amount of \$50,000,000 (not including the amount paid to PBGC for repayment of traditional financial assistance) and a supplemented SFA payment amount of \$30,000,000. A total of \$20,000,000 in

lump-sum make-up payments were paid by Plan D in plan year 2022. An employer withdraws in 2023. At the end of the determination year (2022), the amount of SFA required to be excluded from assets equals \$60,000,000 ($\$50,000,000 + \$30,000,000 - \$20,000,000$). If, instead, the make-up payments were paid by Plan D in plan year 2023, the amount of SFA required to be excluded from assets at the end of the determination year (2022) would equal \$80,000,000. Under this scenario, Plan D's unfunded vested benefit liability would be the same at the end of the determination year because the additional \$20,000,000 of SFA required to be excluded from assets offsets the \$20,000,000 in SFA that the plan still holds for make-up payments but has not yet distributed as of the end of the determination year. Similarly, if the employer withdraws in 2024, the make-up payments were paid in 2023, and the phase-in fraction was 9/10th for 2023, the amount of SFA excluded from the assets at the end of the determination year (2023) would be \$54,000,000 ($9/10\text{th} \times \$60,000,000$), where the \$60,000,000 is calculated as the total \$80,000,000 in SFA paid to the plan minus the \$20,000,000 in make-up payments that were disbursed prior to the end of the determination year.

Issued in Washington, DC, by

Gordon Hartogensis,

Director, Pension Benefit Guaranty Corporation.

[FR Doc. 2023-24268 Filed: 11/6/2023 8:45 am; Publication Date: 11/7/2023]